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carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

(End of clause)

[67 FR 14872, Mar. 28, 2002]

952.233-2 Service of protest.

As prescribed in 48 CFR 933.106(a), add the following to the end of the provision at FAR 52.233-2:

(c) Another copy of a protest filed with the General Accounting Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586-4546.

[61 FR 41711, Aug. 9, 1996, as amended at 67 FR 14872, Mar. 28, 2002]

952.233-4 Notice of protest file availability.

As prescribed in 933.106(b), insert the following provision:

NOTICE OF PROTEST FILE AVAILABILITY (SEP 1996)

(a) If a protest of this procurement is filed with the General Accounting Office (GAO) in accordance with 4 CFR part 21, any actual or prospective offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to FAR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103-355. Such request must be in writing and addressed to the contracting officer for this procurement.

(b) Any offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of FAR 33.104(a)(3)(ii). The Department will be required to make such doc-

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uments available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.)

[61 FR 41711, Aug. 9, 1996]

952.233-5 Agency protest review.

As prescribed in 48 CFR 933.106(c), insert the following provision:

AGENCY PROTEST REVIEW (SEP 1996)

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the contracting officer prior to filing a protest.

[61 FR 41711, Aug. 9, 1996]

952.235-70 Key personnel.

In accordance with 935.070, insert the following clause.

KEY PERSONNEL (APR 1994)

The personnel specified in an attachment to this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the contractor without the written consent of the contracting officer: Provided, that the contracting officer may ratify in writing such diversion and such ratification shall constitute the consent of the contracting officer required by this clause. The attachment to this contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

[49 FR 12042, Mar. 28, 1984, as amended at 56 FR 41965, Aug. 26, 1991; 59 FR 9109, Feb. 25, 1994; 62 FR 2312, Jan. 16, 1997]

952.235-71 Research Misconduct.

As prescribed in 48 CFR Part 935.071, insert the following clause:

Research Misconduct (JUL 2005)

(a) The contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including

the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.

(b) Unless otherwise instructed by the contracting officer, the contractor must conduct an initial inquiry into any allegation of research misconduct. If the contractor determines that there is sufficient evidence to proceed to an investigation, it must notify the contracting officer and, unless otherwise instructed, the contractor must:

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;

(2) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

(3) Inform the contracting officer if an initial inquiry supports a formal investigation and, if requested by the contracting officer thereafter, keep the contracting officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the contractor will forward to the contracting officer a copy of the evidentiary record, the investigative report, any recommendations made to the contractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

(c) The Department may elect to act in lieu of the contractor in conducting an inquiry or investigation into an allegation of research misconduct if the contracting officer finds that:

(1) The research organization is not prepared to handle the allegation in a manner consistent with this clause;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or,

(4) The allegation involves possible criminal misconduct.

(d) In conducting the activities under paragraphs (b) and (c) of this clause, the contractor and the Department, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) *Safeguards for information and subjects of allegations.* The contractor shall provide safe-

guards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the contractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The contractor shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.

(2) *Objectivity and Expertise.* The contractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.

(3) *Timeliness.* The contractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(4) *Confidentiality.* To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.

(5) *Remediation and Sanction.* If the contractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The contractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The contractor must coordinate remedial actions with the contracting officer. The contractor must also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effected consistent with any applicable personnel laws, policies, and procedures, and shall take into account

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the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(e) DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the contractor's good faith administration of this clause and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(f) Definitions.

Adjudication means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

Fabrication means making up data or results and recording or reporting them.

Falsification means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of Research Misconduct means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

Inquiry means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

Investigation means the formal examination and evaluation of the relevant facts.

Plagiarism means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.

Research Misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

Research record means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral pres-

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entations, internal reports, and journal articles.

(g) By executing this contract, the contractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.

(h) The contractor must insert or have inserted the substance of this clause, including paragraph (g), in subcontracts at all tiers that involve research.

(End of clause)

[70 FR 37015, June 28, 2005]

952.236 Construction and architect-engineer contracts.

952.236-71 Inspection in architect-engineer contracts.

As prescribed at 936.609-3 insert the following clause.

INSPECTION (APR 1994)

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

[49 FR 12042, Mar. 28, 1984, as amended at 59 FR 9109, Feb. 25, 1994; 62 FR 2312, Jan. 16, 1997]

952.236-72 Nonrefundable fee for plans and specifications.

In accordance with the requirement at 936.202(h) include the following in solicitations for construction.

NONREFUNDABLE FEE FOR PLANS AND SPECIFICATIONS (APR 1984)

A fee of \$_____ is required for the plans and specifications referenced in this solicitation. Send check or money order to